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FEB 06 2004

OFFICE OF PETITIONS

RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

For: METHOD TO CONTROL REACTIONS
INVOLVING ISOTOPIC FUEL
WITHIN A MATERIAL USING
ORTHOGONAL ELECTRIC-FIELDS

Serial no. 09/ 748,691

Filed: 12/26/2000

This is a division of Serial no. 07/ 760,970

Filed: 09/17/1991

Corres. and Mail
BOX AF

Group Art Unit: 3641
Examiner: Palabrica, R.J.

January 28, 2004

Office of the Clerk
Board Of Patent Appeals
c/o The Commissioner for Patents
Alexandria, VA 22313-1450

**PETITION TO THE COMMISSIONER
PURSUANT TO 37 C.F.R. 1.181**

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GROUP 3600

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct the situation with respect to the recent Office Communication [Exhibit "1" attached, dated 1/22/04, stamped by Michael Carone, and undated, and as described below]. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable, based upon the reasons stated below and confirmed by the facts as discussed in the Declaration supporting this Petition.

2. In the discussion below, reference is made to the Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated January 28, 2004. It will be demonstrated that this Petition is reasonable because of Mr. Carone's failure to be accurate and his systematic failure to follow a uniform standard of review.

3. Said office communication substantively ignores the Appellants Communication dated November 24, 2003. Therefore, the Appellant respectfully disputes each of these. The

Appellant will demonstrate that it is Mr. Carone who has made a series of errors which the Appellant will forensically detail below. One reason is that the Board remanded a case to Mr. Carone (cover as Exhibit "2", attached), and since that day, Mr. Carone has personally attempted to throw out each and every one of the Applicant's patent applications in an apparent attempt to obstruct justice and deny or usurp the Applicant his Constitutional and civil rights.

4. In point, attention is directed to the fact that the most recent office communication was egregiously withheld, then mailed late to arrive on January 26, 2004 so that Appellant would have insufficient time to respond.

The Office's First False Statement

5. The Office's Communication inaccurately states,

"4. Item 3 of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected."

The Truth - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office's notification states, 'd. The statement on Grouping of Claims is improper because it includes arguments as to why certain claims do not stand or fall together. These arguments should be in the Argument section.'"

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5.

The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on page 5 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office to this matter. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the

Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (*vide supra, vide infra*).

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5.

Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office."

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

" the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111."

The Office's Second False Statement

6. The Office's Communication inaccurately states,

"4. Item 3 .. of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected."

The Truth - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"12. The Office's Communication inaccurately states,

"3. The Grouping of Claims states that claims do not stand or fall together."

" However, there is not discussion in the Arguments section of why EACH claim is considered separately patentable."

THE TRUTH - there is not discussion in the Arguments section of why EACH claim is considered separately patentable

The Office is wrong for at least seven reasons. First, Appellant respectfully disputes this because there is discussion in the Arguments section of why EACH claim is considered separately patentable.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on 5,

"The Office's notification states,

"d. The statement on Grouping of Claims is improper because it includes arguments as to why certain claims do not stand or fall together. These arguments should be in the Argument section."

The Applicant has corrected this as requested."

["Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5.

The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on page 5 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section

for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (*vide supra*, *vide infra*).

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board. Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate. Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5. Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office."

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5."

The Office's Third False Statement

7. The Office's Communication inaccurately states,

"4. Item ... 4 of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected."

The Truth - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"11. The Office's Communication inaccurately states, "4. The Arguments section is still incomplete and improper. "

THE TRUTH - The Arguments section is complete and proper

The Office is wrong for at least five reasons. First, Appellant respectfully disputes this because the Arguments section is complete and proper.

Second, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (*vide supra, vide infra*).

Third, Appellant respectfully disputes this because it was discussed on pages 11 through 61 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on pages 62 through 71 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on pages 72 through 89 of the Argument section for 35 U.S.C. 102, and then on pages 90 through 110 of the Argument section for 35 U.S.C. 103, and then on pages 111 through 119 of the Argument section for 35 U.S.C. 101.

Fourth, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fifth, Appellant notes that said confabulation suggests obstruction of justice under color of law by the Office."

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Third, Appellant respectfully disputes this because it was discussed on pages 11 through 61 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on pages 62 through 71 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on pages 72 through 89 of the Argument section for 35 U.S.C. 102, and then on pages 90 through 110 of the Argument section for 35 U.S.C. 103, and then on pages 111 through 119 of the Argument section for 35 U.S.C. 101."

The Office's Fourth False Statement

8. The Office's Communication inaccurately states,

"4. Item ... 4 of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected."

The Truth - The Purported "New Matter Rejection" Was Identified And Discussed

The Office's Communication stated, "Not all grounds for rejection have been addressed, e.g., new matter rejection under section 9 of the Final Office Action. "

However, the Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong for at least seven reasons. First, Appellant respectfully disputes this because the purported "new matter rejection" was identified and discussed on pages 3 and 4 in said Notice. Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on pages 3 and 4,

"The Office's notification states,

"e. The discussion of applicant's contentions in the Argument section is improper. MPEP states, for example, that for each rejection under 35 U.S.C., first paragraph, the argument shall specify the errors in rejection and how said first paragraph is complied with, including as appropriate, how the specification and drawings, if any, a) describe the subject matter defined in each of the rejected claims; b) enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims; and c) set forth the best mode contemplated by the inventor of carrying out the invention. Applicant does not conform to this requirement of cited example of showing how his application complies with the first paragraph"

Applicant has corrected this, as requested."

["Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief, as said Notice stated on pages 3 and 4. The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was

discussed with specificity on pages 3 and 4 in said Notice of Sept. 17, 2003 and on pages 68 through 78 in the Appeal Brief. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate. Fifth, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra). Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4. Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office."

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief, as said Notice stated on pages 3 and 4. The meticulous effort of the Appellant was again ignored."

The Office's Fifth False Statement

9. The Office's Communication inaccurately states,

"3. As to "operability" being a 35 U.S.C. 101 rather than a 35 U.S.C. 112, first and second paragraph issue, there has not been any change on the Office interpretation of this matter, contrary to the allegation of the Applicant."

The Truth - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

" 8. The Office's Communication inaccurately states,

" The claimed "operability" of the invention is not a 35 U.S.C, 112, first and second paragraph issues, but a 35 U.S.C. 101 issue. "

The Office is wrong for at least four reasons. First, Appellant respectfully disputes this because this is nonsense. For ten years the Office has cited "operability" pursuant to 35 U.S.C, 112, first paragraph issues. All of a sudden, Mr. Carone changes the Office's previous arguments that were reasonably consistent over more than a decade in this matter. This is egregious without a clear substantive basis for the paroxysmal change.

Second, Appellant respectfully disputes this because a 35 U.S.C. 101 issue involves utility and not "operability". Appellant discussed this in detail. Attention of the Court, Board, and Commissioner is now directed to where it was discussed in detail on pages 121 through 119 in the Appeal Brief. The effort of the Appellant was ignored. Where is the Office's response? Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement. Third, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board. Fourth, Appellant respectfully disputes this purported change by the Office because this is a new argument of the Office, and should be in the Argument section of the Office's response.

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response.

The Office's Sixth False Statement

10. The Office's Communication inaccurately states,

"2. As to recitation of issues still improper, see for example the last paragraph on page 9 of the Amended Appeal Brief."

The Truth - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"6. The Office's Communication inaccurately states,

"2. The recitation of Issues is still improper (see item c of the previous OA)."

THE TRUTH - the recitation of Issues is proper

The Office is wrong for at least six reasons. First, Appellant respectfully disputes this because the recitation of Issues is indeed proper.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. In said Notice, the Appellant said on pages 3 and 4,

"The Office's notification states,

"c. The recitation and scope of Issues is improper. MPEP 1206 states that each stated issue should correspond to a separate ground of rejection which the appellant washes the Board to review. The statement of issues should not include any argument concerning the merit of the issues. For example, a proper way of phrasing an issue is as follows: 'Whether claims 1, 5 8, 10 14 and 21 30 are unpatentable under U.S.C. 101 because the claimed invention is inoperative and therefore lacks unity.' Applicant improperly includes other issues not relevant to the grounds of rejection used by the examiner, e.g., U.S. Constitution."

"The Applicant has corrected this as requested. The Applicant has removed the offending references to the " U.S. Constitution." and reserves his rights to take the Constitutional issues to the Federal Court, First Circuit by this unconstitutional action of the Office and/or Board censoring the very document which enables the Office."

The Applicant has corrected this, and removed the citation from this section."

["Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on pages 8 through 9 in the Appeal Brief, as said Notice stated on pages 3 and 4. The effort of the Appellant was ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on pages 3 and 4 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement.

Third, Appellant respectfully disputes this because each and every matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board.

Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Fifth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4.

Sixth, in the legal system, it is Appellant who makes notice of the Appeal - and not the Office. The Office is demanding that IT fashion the Appellant's issues. For some unknown reason, the Office now demands to control the thought, the Appeal, the issues, and the Arguments as of this date. That is unlawful and consistent with harassment, and has much more than an appearance of impropriety."

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Applicant has corrected this as requested. The Applicant has removed the offending references to the " U.S. Constitution."

The Office's Seventh False Statement

11. The Office's Communication inaccurately states,

"1. As to the summary still containing subject matter not found in the specification, see for example, page 4, 2nd paragraph and page 7, last three paragraphs of the 9/23/03 Amendment of the Appeal Brief (An-ended Appeal Brief."

This is new material and was not specified in the previous notice. Furthermore, the Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"1. The Summary still includes subject matter not found in the specification (see item b of previous Office Action)."

The Office is wrong for at least five reasons. First, Appellant respectfully disputes this because the subject matter was discussed in the specification.

Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sept. 17, 2003. For example, in said Notice, the Appellant said on page 2,

"The Office's notification (of 8/28/03) states,

"The Summary includes subject matter not found in the specification (see page 7, last three paragraphs)."

The Applicant has corrected this, and removed the citation from this section."

["Notice of Compliance by Appellant", dated Sept. 17, 2003, page 2]

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on pages 4 through 7 in the Appeal Brief, as said Notice stated on page 2. Not only was the effort of the Appellant ignored, but the Notice itself was ignored -- despite the fact that it was discussed with specificity on page 2 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office. Instead, the Communication of 11/18/03, the second Office Communication, once again has a false statement.

Third, Appellant respectfully disputes this because each and every matter of the invention was already before the Board. The Appellant has a right to present his case and for it to be concise, clear and accurate before the Board.

Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate. Fifth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 2.

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. Nonetheless, the Appellant will excise the offending paragraphs, and will resubmit to please the Examiner and Mr. Carone, who will not allow an appeal because they have received a Remand from the Board already [Exhibit "2"].

The Office's Eighth False Statement

12. The Office's Communication inaccurately states,

"Since the above deficiencies have been listed in the 8/29/03 Office Action and in the 11/18/03 Notice of Non-Responsive Amendment, Applicant's failure to correct them is not considered inadvertent."

The Truth - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"14. The Office's Communication inaccurately states,

"Since the above deficiencies have been listed in the 8/29/03 Office Action, Applicant's failure to correct them is no longer considered inadvertent."

The Office is wrong for at least six reasons. First, Appellant respectfully disputes this because there are no "deficiencies". Second, Appellant respectfully disputes this because Applicant did NOT fail to correct them.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant respectfully disputes this because this was discussed on pages 2 though 5 of said Notice.

Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 2 though 5.

["Appellant's Notice to the Board", dated Nov, 18, 2003]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments.


Furthermore, attention is directed to the fact that despite the Office's allegation, the Appellant made many many changes including entering claim 14 in Appendix A of the revised brief as requested, including responding to the Examiner (incorrect) demand that Appendix B should be deleted, and including responding to the Examiner (incorrect) demand that not all grounds for rejection of claims are addressed regarding new claims 24, 26 and 28. These and other demands by the Examiner (made to unconstitutionally prevent an Appeal) were satisfied. Instead, of abiding by the law, there are at least a dozen errors in the Communication of 11/18/03 by Mr. Carone.

This is unfair. This is unreasonable. This has been a pattern. Since receipt of the Remand from the Board, the Examiner and/or Mr. Carone has made false statement after false statement. If there was a fifty percent likelihood of each error (that is, if it were made innocently), then the scores of errors since then reveal that there is only a one in a trillion likelihood that Mr. Carone and/or the Examiner are innocent.

Applicant respectfully notes that the U.S. Supreme Court has ruled that any pro se litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

WHEREFORE for the above reasons, the Applicant (now Appellant) respectfully requests a reversal, and if not a substantive response, then an apology from the Office to the Board for the delay - with transfer of the Exhibits and Appeals Briefs to the Board.

Respectfully submitted,



Mitchell R. Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]

January 28, 2004

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

"Office of the Clerk
Board Of Patent Appeals
c/o The Commissioner for Patents
Alexandria, VA 22313-1450" on the date below.

Thank you.

Sincerely,

January 28, 2004


M.R. Swartz



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,691	12/26/2000	Mitchell R. Swartz		4269

7590 01/22/2004
Mitchell R. Swartz, ScD, MD, EE
16 Pembroke Road
Weston, MA 02493

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "I"

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 68

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE DIRECTOR
OF
THE UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

APR 21 2003

In re Application of

MITCHELL R. SWARTZ

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 1997-3208
Application No. 07/339,976

EXHIBIT
"2"

DECISION ON PETITION

On September 24, 1998, Petitioner Swartz (Swartz) filed (1) a petition to the Commissioner, hereinafter referred to as Director, pursuant to 37 CFR § 1.181 (Paper No. 66) and (2) a motion for a finding of contempt pursuant to 18 U.S.C. § 401 (Paper No. 67). These papers were brought to the attention of the Board of Patent Appeals and Interferences (Board) on March 12, 2003. The delay was predicated on the need for the Examining Corps to address an earlier petition under 37 CFR § 1.181 filed November 24, 1997 (Paper No. 62). The delay in responding to this petition is deeply regretted.



**RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

For: METHOD TO CONTROL REACTIONS
INVOLVING ISOTOPIC FUEL
WITHIN A MATERIAL USING
ORTHOGONAL ELECTRIC-FIELDS

Serial no. 09/ 748,691

Filed: 12/26/2000

This is a division of Serial no. 07/ 760,970

Filed: 09/17/1991

Group Art Unit: 3641
Examiner: Palabrica, R.J.

January 28, 2004

RECEIVED

FEB 12 2004

DECLARATION OF DR. MITCHELL SWARTZ

GROUP 3600

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

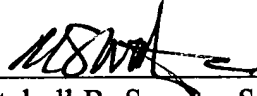
1. I have a background in electrical engineering, material science, electrochemistry, and medicine, and have worked in this field for more than a decade, and have worked on experimental projects at the Massachusetts Institute of Technology, Massachusetts General Hospital and elsewhere.

2. I received the Office's communication dated 1/22/04 (cover as Exhibit "1", attached). There are many errors, and a few a listed below.

3. The Office's Communication inaccurately states, "4. Item 3 of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected". This communication, like the Communication of 11/18/03, the second Office Communication ignores that this was addressed in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

4. The Office's Communication inaccurately states, "4. Item 3 .. of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected". The Office is wrong because I did correct it on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5.


5. The Office's Communication inaccurately states, "4. Item ... 4 of the 11/18/03 Notice regarding incompleteness of the Arguments section have not been properly addressed and corrected". However, it was discussed on pages 11 through 61 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on pages 62 through 71 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on pages 72 through 89 of the Argument section for 35 U.S.C. 102, and then on pages 90 through 110 of the Argument section for 35 U.S.C. 103, and then on pages 111 through 119 of the Argument section for 35 U.S.C. 101.



Mitchell R. Swartz, ScD, MD

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:
January 28, 2004



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